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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/645,962	08/22/2003	David Farrar	00167-482001 / 02-31-0454	8400
26166	7590	04/05/2007	EXAMINER	
FISH & RICHARDSON P.C. SMITH & NEPHEW, INC. 1450 BROOKS ROAD MEMPHIS, TN 38116			IZQUIERDO, DAVID A	
			ART UNIT	PAPER NUMBER
			3738	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	04/05/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/645,962

Applicant(s)

FARRAR ET AL.

Examiner

David A. Izquierdo

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 January 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,8-11,22-24,31,32 and 37 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,8-11,22-24,31, 32 and 37 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Response to Arguments

1. Applicant's arguments with respect to claims 1, 8-11, 22-24, 31, 32, and 37 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 102

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 8-11, and 37 are rejected under 35 U.S.C. 102(b) as being anticipated by Draenert (U.S Patent Number 4,373,217).
3. Draenert discloses a tissue replacement material comprised of a ceramic composition and a polymeric scaffold wherein the ceramic degrades in vivo and the polymer scaffold remains and further provides pores to facilitate tissue ingrowth once the ceramic has been fully resorbed (col. 3, lines 1-27). The tissue replacement material of Draenert is further provides an antibiotic admixed within the composition (Col. 6, lines 32-37).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 22-24 and 31-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sambrook et al. ("Sambrook") (WIPO 02/15881) as identified by Applicant within the

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Information Disclosure Statement in view of Dillon (U.S. Patent Number 4,849,285) and Brown (U.S. Patent Number 6,583,232)

6. Sambrook discloses a medical device comprised of two components, a porous ceramic scaffold wherein the pores have a diameter between 20 and 200 microns and the scaffold has a porosity of between 10 percent and 90 percent (page 3, paragraph 3) and a polymeric material which fills the pores of the ceramic scaffold wherein the polymeric material comprised a higher rate of degradation than the ceramic scaffold. The combination of the two layer provides a device which is substantially non-porous prior to implantation and allows for the ingrowth of tissue after implantation (page 8, paragraphs 4-5).

7. Furthermore, Sambrook discloses a polymeric layer comprising a therapeutic additive comprising a higher rate of degradation than the ceramic scaffold (pages 13-14).

8. However Sambrook fails to disclose the use of tricalcium phosphate or polyglyconate B as the ceramic and polymer within the medical device. It is well known in the art to use tricalcium phosphate and polyglyconate B within tissue replacement devices however the disclosures of Dillon and Brown are provided to demonstrate the use of these compounds. It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the medical device of Sambrook with the compounds as provided by Dillon and Brown. The motivation to combine the compounds of Dillon and Brown with the device of Sambrook being that tricalcium phosphate is biocompatible, promotes tissue ingrowth and is bioresorbable (Dillon: col. 1, lines 35-40) and polyglyconate B degrades rapidly *in-vivo* to provide porosity and allow for tissue ingrowth (Brown: col. 3, lines 8-15).

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Conclusion

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to David A. Izquierdo whose telephone number is 571-272-1943.

The examiner can normally be reached on Monday through Friday from 8:00 am until 4:30 pm.


10. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott can be reached on 571-272-4754. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

11. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

David A. Izquierdo



Patent Examiner


CORRINE McDERMOTT
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3738